

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

**BENEDICTINE HOSPITAL
Petitioner**

and

Case 3-UC-534

**NEW YORK STATE NURSES ASSOCIATION
Union**

DECISION AND CLARIFICATION OF BARGAINING UNIT

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. I further find, based on the record and the parties' stipulations, that Benedictine Hospital, herein referred to as the Employer, with an office and principal place of business located in Kingston, New York, is engaged in the operation of an acute-care medical facility. Annually, in conducting its business operations, the Employer derives gross revenues in excess of \$50,000, and purchases goods and services valued in excess of \$50,000 directly from points located outside the State of New York.

The Union, pursuant to a Certification of Representative issued in Case 3-RC-11841 on November 13, 2008, is the exclusive representative of employees in the following appropriate bargaining unit, herein called the Unit:

All full-time, regular part-time and per diem levels I, II, III and IV registered nurses, clinical nurse specialists, SWAT nurses, discharge nurses, care coordination nurses, staff educators, admission assessment registered nurses, and registered nurses on permit employed by the Employer, excluding office clerical employees, service and maintenance employees, technical employees, guards, all non-supervisory professional employees not working as registered nurses, and all managerial and supervisory employees, including the chief nursing officer, the program director of the rehabilitation unit, the director of surgical services, the administrative director of patient care services, the manager of infusion therapy, the director of care coordinators, denial management coordinators, infection control coordinators, quality assurance improvement (QAI) coordinators, risk management coordinator, the vice-president of patient care services, nurse managers, administrative directors, clinical coordinators, nursing supervisors and evening/night charge nurses.

The Petitioner seeks to clarify the Unit to exclude operating room nurses, including, but not limited to, pre-surgical testing nurses and ambulatory surgery nurses, circulating registered nurses, scrub registered nurses, and recovery room registered nurses employed by a third party. At the hearing, the parties stipulated that the third party, an entity known as Nistel, Inc., is the sole employer of the employees Petitioner is seeking to exclude from the bargaining unit. Following the closing of the hearing in this matter, the Union has represented that it does not oppose the Petitioner's request to clarify the Unit.

I conclude, in view of the parties' factual stipulation, and as the Union does not oppose the Petitioner's request to exclude those nurses described above who are employed by Nistel, Inc., that these job titles are appropriately excluded from the certified unit of Petitioner's employees. Accordingly,

ORDER

IT IS HEREBY ORDERED that the bargaining unit represented by New York State Nurses Association is hereby clarified to exclude operating room nurses, including, but not limited to, pre-surgical testing nurses and ambulatory surgery nurses, circulating registered nurses, scrub registered nurses, and recovery room registered nurses employed by a third party.

The clarified unit is:

All full-time, regular part-time and per diem levels I, II, III and IV registered nurses, clinical nurse specialists, SWAT nurses, discharge nurses, care coordination nurses, staff educators, admission assessment registered nurses, and registered nurses on permit employed by the Employer, excluding office clerical employees, service and maintenance employees, technical employees, guards, all non-supervisory professional employees not working as registered nurses, and all managerial and supervisory employees, including the chief nursing officer, the program director of the rehabilitation unit, the director of surgical services, the administrative director of patient care services, the manager of infusion therapy, the director of care coordinators, denial management coordinators, infection control coordinators, quality assurance improvement (QAI) coordinators, risk management coordinator, the vice-president of patient care services, nurse managers, administrative directors, clinical coordinators, nursing supervisors and evening/night charge nurses and operating room nurses, including but not limited to pre-surgical testing nurses and ambulatory surgery nurses, circulating registered nurses, scrub registered nurses, and recovery room registered nurses employed by a third party.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT on **March 4, 2009**. The request may be filed electronically through the Agency's web site, www.nlrb.gov,¹ but may not be filed by facsimile.

¹ To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the

attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

DATED at Buffalo, New York this 18th day of February, 2009.

PAUL J. MURPHY

Acting Regional Director
National Labor Relations Board Region 3
Niagara Center Building
130 South Elmwood Avenue, Suite 630
Buffalo, New York 14202